

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

MAY 24 2005

ARLEN B. COYLE, CLERK
By [Signature] Deputy

PAUL PATE,

Plaintiff,

VERSUS

CIVIL ACTION NO.: 1:05CV134-DD

WAL-MART STORES, INC.,

Defendant

JURY TRIAL DEMANDED

COMPLAINT

This is an action to recover actual and liquidated damages for age discrimination. The following facts support the action:

1.

Plaintiff, PAUL PATE, is an adult resident citizen of 5412 Chesterville Road, Tupelo, Mississippi 38801.

2.

Defendant, WAL-MART STORES, INC., is a Delaware corporation with its principal place of business in Arkansas. It may be served with process through its registered agent, Corporation Service Company, at 506 South President Street, Jackson, Mississippi 39201.

3.

The court has federal question jurisdiction under 28 U.S.C. § 1331, for a cause of action for willful age discrimination, arising under the Age Discrimination in Employment Act, 29

U.S.C. § 621, et seq.

4.

Plaintiff Paul Pate is a retired school administrator having worked as a school principal and in other teaching and administrative positions over a period of twenty-eight years. Commencing in approximately 1998 or 1999 and ending on March 4, 2004, Plaintiff repeatedly applied for jobs at the Wal-Mart Distribution in New Albany, Mississippi. Plaintiff specified that he had experience as a forklift operator, but that he would be willing to do any type of work. Plaintiff had great difficulty in obtaining an interview, but finally obtained one. Wal-Mart had attempted to discourage him from being interviewed by indicating it only had certain undesirable shifts.

5.

On March 18, 2004, Wal-Mart sent Plaintiff a card stating he was no longer being considered for employment.

6.

Plaintiff has filed an EEOC charge, attached hereto as Exhibit "A," and received a right-to-sue letter, attached hereto as Exhibit "B."

7.

Because of Plaintiff's long and varied experience and his excellent work history, and because Plaintiff's examination of the Wal-Mart Distribution Center indicates that only young employees work there, Plaintiff believes that his age (62) is the reason why he has not been

considered for a position as a forklift operator or any other position at the Wal-Mart Distribution Center.

8.

The age discrimination against Plaintiff has been willful.

9.

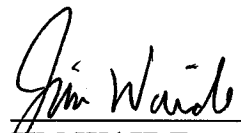

Plaintiff is entitled to actual and liquidated damages, and an injunction, offering him employment at the Wal-Mart Distribution Center in New Albany, Mississippi.

PRAYER

The Plaintiff prays for actual and liquidated damages in an amount to be determined by a jury, an injunction offering him employment, as well as for reasonable attorneys' fees.

Respectfully submitted,

WAIDE & ASSOCIATES, P.A.

BY:  with permission
JIM WAIDE
MS BAR NO.: 6857 

WAIDE & ASSOCIATES, P.A.
ATTORNEYS AT LAW
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Attorneys for Plaintiff

CHARGE OF DISCRIMINATION

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CHARGE NUMBER

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

☐ FEPA
☐ EEOC

131-2004-05807

and EEOC

State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.)

HOME TELEPHONE (Include Area Code)

Mr. Paul Buford Pate

662-842-2436

STREET ADDRESS

CITY, STATE AND ZIP CODE

DATE OF BIRTH

5412 Chesterville Road

Tupelo, MS 38801

3-29-43

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME

NUMBER OF EMPLOYEES, MEMBERS

TELEPHONE (Include Area Code)

Wal-Mart Distribution Center

100+

479-254-0364

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

5801 SW Regional Airport Blvd.

Bentonville, AR 72712

NAME

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☒ AGE
☐ RETALIATION ☐ NATIONAL ORIGIN ☐ DISABILITY ☐ OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE
EARLIEST (ADEA/EPA) LATEST (ALL)

3-2004

☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

SEE ATTACHED

RECEIVED

AUG 18 2004

EEOC / JAO

I want this charge filed with both the EEOC and the State or local Agency, and I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

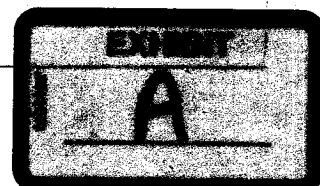
I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Day, month, and year)

Charged Party (Signature)

8/16/04



DOB: 3-29-43

SSN: 426-78-9791

I am a retired school principal and administrator. I am 61 years old. For many months I have been applying for employment at Wal-Mart's Distribution Center in New Albany, Mississippi. I specified that I have experience as a forklift operator and would like that type of work. However, I have also placed on my mini application that I would do any type of work. For a long time I could not get an interview, but finally obtained an interview. I have now been told that I will not be hired. In going through the plant, I have noticed that almost all of the workers appear to be under the age of 40. The only reason I know of as to why Wal-Mart will not offer employment is my age, 61.

I request the EEOC to investigate and to determine whether Wal-Mart has a policy of not hiring persons at its distribution center unless they are young people. I request that Wal-Mart provide the age of all of its employees at its distribution center in New Albany, as well as its distribution centers nationwide, so that it can be determined whether it has a policy of not hiring older people.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Paul Buford Pate
5412 Chesterville Road
Tupelo, MS 38801

From: EEOC - Jackson Area Office
100 West Capitol Street, Suite 207
Jackson, MS 39269

[] On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR § 1601.7(a))

Charge No.	EEOC Representative	Telephone No.
131-2004-05807	Jackie T. Blackwell, Senior Investigator	(601) 965-4353

(See also the additional information attached to this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA must be filed in federal or state court **WITHIN 90 DAYS** of your receipt of this Notice. Otherwise, your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

- [] More than 180 days have passed since the filing of this charge.
- [] Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of the charge.
- [] The EEOC is terminating its processing of this charge.
- [] The EEOC will continue to process this charge.

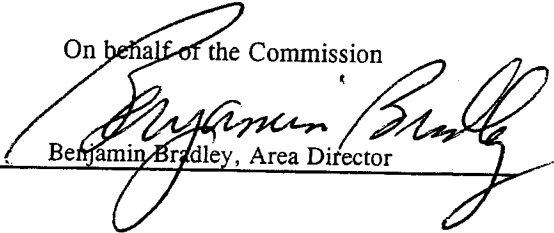
Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

- [X] The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court **WITHIN 90 DAYS** of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.
- [] The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of your charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission


Benjamin Bradley, Area Director

2/28/05-
(Date Mailed)

Enclosure(s)

c: Wal-Mart Distribution Center
5801 SW Regional Airport Blvd.
Bentonville, AR 72712

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